

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Sanders,		NOTICE OF DETERMINATION OF
	Complainant,	PRIMA FACIE VIOLATION
vs.		AND
Alan Williams,		NOTICE OF AND ORDER FOR
	Respondent.	PROBABLE CAUSE HEARING

**TO: THE PARTIES.**

On September 13, 2010, Bruce Sanders filed a Campaign Complaint with the Office of Administrative Hearings alleging that Alan Williams violated Minnesota Statutes § 211B.04 by failing to include the required disclaimer on his lawn sign. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.04.

**THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN** that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:30 a.m. on Friday, September 17, 2010**. The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter **"9948152928"** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing, all parties have the right to be represented by legal counsel, represent themselves, or by a person of their choice, if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Cervantes at [Manuel.Cervantes@state.mn.us](mailto:Manuel.Cervantes@state.mn.us) or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary

hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: September 14, 2010

\_\_\_\_\_/s/ Manuel J. Cervantes\_\_\_\_\_  
MANUEL J. CERVANTES  
Administrative Law Judge

### **MEMORANDUM**

The Respondent, Alan Williams, is a candidate in the November 2010 general election for the Ward 5 seat on the Coon Rapids City Council. The Complaint alleges that the signs promoting the candidacy of Mr. Williams lack the disclaimer required by Minn. Stat. § 211B.04. The campaign signs state:

Alan  
Williams  
for Council  
CoonRapidsWard.com

The word Alan is flanked by stars and contrasting blue bars form the background for "Alan" and "for Council." No additional language appears on the sign. There does not appear to be any disclaimer at any location on the sign indicating who paid for the sign. By disseminating these lawn signs, the Complainant maintains that Alan Williams violated Minn. Stat. § 211B.04.

Minnesota Statutes § 211B.04 requires disclosure regarding the source of funds for campaign materials, as follows:

**211B.04 CAMPAIGN LITERATURE MUST INCLUDE DISCLAIMER.**

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, .....(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the ..... committee, .....(address), in support of .....(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the ..... committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to .....(insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

(g) This section does not modify or repeal section 211B.06.<sup>1</sup>

In 2006, the disclosure requirements in Section 211B.04 were found to be unconstitutional by the Minnesota Court of Appeals.<sup>2</sup> Subsequently, the U.S. Supreme Court held that federal disclaimer provisions, substantially similar to those in Minn. Stat. § 211B.04, place no significant burden on First Amendment rights.<sup>3</sup> Following the Supreme Court decision, the Minnesota Legislature amended Minn. Stat. § 211B.04. The enacting provision indicated that the statute was to apply to all campaign material

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<sup>1</sup> Minn. Stat. § 211B.04, as amended by Laws of Minn. 2010, Chap. 397, Sec. 15.

<sup>2</sup> *Riley v. Jankowski*, 713 N.W.2d 379, 405 (Minn. App.), *rev. denied* (2006).

<sup>3</sup> *Citizens United v. FEC*, 558 U.S. 50 (2010).

prepared and disseminated on or after June 1, 2010, the effective date of the amendment.<sup>4</sup>

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>5</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>6</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>7</sup>

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.04. The absence of the required disclaimer identifying who prepared and paid for the signage appears to be a violation of the statute.

**M.J.C.**

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<sup>4</sup> See Laws of Minnesota 2010 Chapter 397, Sec. 15.

<sup>5</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*